IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 242 OF 2006

M/s. Keshav Sinai Kunde & Co.,
Near Railway Gate, behind Loyola
High School, Salcete Goa. ... Petitioner

Versus

1. Shri Antonio Wilton Camara, s/o. Franciso Xavier Camara, aged 56 years, retired, serviceman, r/o. H.No.3, Monte Pio Quarters, Pedda, Margao, Salcete, Goa.
2. Smt. Sandra Camara, w/o. Antonio Camara, aged 43 years, housewife, r/o. H.No.3, Monte Pio Quarters, Pedda, Margao, Salcete, Goa. ... Respondents

Mr. G.M. Kudchadkar for the petitioner.

Mr. N.N. Sardesai for the respondents.

CORAM : SMT. RANJANA P. DESAI, J.

DATED : 28TH JUNE 2006.

ORAL ORDER :

1. In this petition, the petitioner has challenged the order dated 31/01/2006 passed by the Civil Judge, Junior

Division, Margao in Regular Civil Suit No.229/04/D. By the impugned order, the trial court had granted amendment application filed by the respondents/plaintiffs.

2. I have heard Mr. Kudchadkar, the learned counsel for the petitioner, at considerable length. He drew my attention to the draft amendment. His serious objection is to the amendment, which the plaintiffs propose to carry out in paragraph 9 of the plaint. He pointed out that the plaintiffs by this amendment propose to delete from line 4 of paragraph 9 the words “by the father of the plaintiff” and insert in their place the words “by someone”. He submitted that the sale deed executed by the father of the plaintiffs is of the year 1975. If the plaintiffs stick to this case then the suit is barred by limitation. In order to get over this, the plaintiffs now want to amend the plaint. According to the learned counsel, the plaintiffs are trying to withdraw admission made by them in the plaint to the prejudice of the defendant. In this connection, he relied on the judgment of the Supreme Court in ***Heeralal v. Kalyan Mal and others, AIR 1998 SC 618***, where the Supreme Court was dealing with amendment of the

written statement. In the facts of that case, the Supreme Court observed that the defendant cannot be allowed to amend his written statement by taking an inconsistent plea as compared to the earlier plea which contained an admission in favour of the plaintiff. It was further held that such an inconsistent plea which would displace the plaintiff completely from the admissions made by the defendants in the written statement cannot be allowed. The learned counsel then relied on the judgment of the Andhra Pradesh High Court in ***Manepalli Venkata Lokanath Prasad and others v. Gogineni Suryanarayana and others, 2002 A I H C 2188***, where the Andhra Pradesh High Court was considering an application for amendment of the plaint. The Andhra Pradesh High Court observed that if the proposed amendment is allowed, the amended pleading will have the effect of wiping out the admissions made in the plaint. In the circumstances, the amendment application was rejected. The learned counsel contended that in the light of the above judgments, the amendment application deserves to be rejected.

3. Mr. Sardesai, the learned counsel appearing for the respondents, on the other hand, contended that no interference is necessary with the impugned order.

4. It is well settled that the courts have to be liberal while considering amendment applications so as to prevent multiplicity of proceedings. In the instant case, it is sought to be urged that the plaintiffs are trying to withdraw admission made by them in the plaint. However, such a specific plea is not taken in the reply to the amendment application. Apart from that, in my opinion, in the facts of this case, it cannot be said that any prejudice is caused to the defendant. If to get over the limitation, the plaintiffs are seeking to bring about the amendment, the trial court can always deal with that issue at the appropriate time.

5. I may usefully refer to the judgment of the Supreme Court in ***Prem Bakshi and others v. Dharam Dev and others, (2002) 2 SCC 2*** where the Supreme Court has dealt with the aspect of prejudice. The relevant portion of the said judgment reads thus :

> "It is almost inconceivable how mere amendments of pleadings could possibly cause failure of justice or irreparable injury to any party. The converse is possible i.e. refusal to permit the amendment sought for could in certain situations result in miscarriage of justice. After all, amendments of the pleadings would not amount to decisions on the issue involved. They would only serve advance notice to the other side as to the plea, which a party might take up. Therefore, it is not possible to envisage a situation where amendment of pleadings, whatever be the nature of such amendment, would even remotely cause failure of justice or irreparable injury to any party."

6. Reference may also be made to the judgment of the Supreme Court in ***Akshaya Restaurant v. P. Anjanappa and another, JT 1995 (6) SC 269.*** In that case, it was argued that having made an admission that the respondents therein had entered into an agreement of sale

and having made certain averments in support thereof, it was not open to the respondents therein to wriggle out from the admission because admission is a material piece of evidence which would bind the party making it. When the admission is sought to be withdrawn and some additional facts are sought to be introduced, it would be inconsistent and the High Court was not justified in permitting such an amendment. The Supreme Court rejected this argument and observed as follows :

> "…. It is settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. It is seen that in paragraph 6 of the written statement definite stand was taken but subsequently in the application for amendment, it was sought to be modified as indicated in the petition. In that view of the matter, we find that there is no material irregularity committed by the High Court in exercising its power under Section 115 C.P.C. in permitting amendment of the written statement."

7. In view of the above, in my opinion, there is no substance in the petition. Petition is rejected.

(SMT. RANJANA DESAI, J.)